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Select Committee on Assassinations - United States House of Representatives; John Ray; Perjury

This is in response to your request for our views as to whether John Ray should be prosecuted for perjury, 18 U.S.C. 1621, as a result of Mr. Ray's alleged false testimony to the House Select Committee on Assassinations. We have concluded that prosecution should be declined because (1) the allegedly false testimony was not material and (2) all surrounding circumstances show that prosecutorial discretion is best exercised by declining prosecution.

By letter to the Attorney General dated June 15, 1978 (Tab A), the Committee specifically referred John Ray's May 9, 1978 testimony [redacted]

Prior to formally referring this matter to the Department of Justice, Mr. Blakey met with United States Attorney Earl Silbert and a representative of the Criminal Division on May 24, 1978 concerning this allegedly false testimony. At that time Mr. Blakey advised that the primary reason that he wanted John Ray charged with perjury was to convince James Earl Ray to testify before the Committee concerning his knowledge of the assassination of Dr. Martin Luther King. [redacted]

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On May 9, 1978, John Ray appeared before the Committee in Executive Session after having been granted immunity pursuant to 18 U.S.C. 6005. [redacted]

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John Ray was convicted of the 1970 robbery of the Bank of St. Peters, Missouri. He received an 18 year sentence from which he was to be paroled in late June, 1978. His May 9, 1978 Executive Session testimony, however, contains [redacted]

[redacted]

Our recommendation to decline prosecution in this case is based on the following reasons:

(1) If John Ray were indicted for perjury, the charges would be of a "bootstrap" variety: i.e., the charge arises from sworn testimony recently elicited about events which occurred eight or more years ago. Since we can no longer prosecute John Ray for the bank robberies themselves because of the five year statute of limitations (see 18 U.S.C. 3282), we would be bootstraping ourselves by going after John Ray for perjury concerning those same bank robberies. 1/ Although logic indicates that a prosecution for perjury about crimes that occurred beyond the statute of limitations will lie, there is little law directly on the issue. Judge Wyzanski stated in dicta in United States v. Worcester, 190 F. Supp. 548, 569 (D. Mass. 1961); that a federal perjury prosecution may be based upon a willfully false statement about a matter not punishable by the federal criminal law. In Worcester, the defendants argued unsuccessfully that it was "fundamentally unfair to put them under oath as witnesses to testify to matters occurring many years ago, many of which [were] barred by the statute of limitations." Cf. United States v. Rayor, 204 F. Supp. 486, 492 (S.D. Cal. 1962), aff'd, 323 F.2d 519 (9th Cir. 1963), cert. den., 375 U.S. 993 (1964).

1/ See attached copy of former DAG Tyler's memorandum to former Director Kelley in which the bootstrap principle was used to decline prosecution of an FBI agent for obstruction of justice in connection with perjurious statements given during an FBI internal investigation into the destruction of a note from Lee Harvey Oswald that Mr. Oswald had left at the Dallas field office approximately a week before the Kennedy assassination (Tab E).

(2) Only one of the bank robberies, the robbery of the Bank of Alton, Illinois, on July 13, 1967, was committed during the period of James Earl Ray's fugitivity — from April 23, 1967 through June 8, 1968. There is no existing or anticipated testimony or other evidence to link John Ray or James Earl Ray to that robbery. It appears that the real issue concerning the remaining bank robberies is that of establishing the materiality of the testimony, a necessary element for a perjury prosecution. The traditional test of materiality of a false statement is whether the testimony has a natural effect or tendency to influence, impede or dissuade the investigating body. United States v. Parker, 244 F.2d 943 (7th Cir.), cert. den. 355 U.S. 836 (1957). [redacted] broad (see [redacted] purpose of [redacted] The bank robberies that occurred after James Earl Ray was arrested on June 8, 1968 could not have been a source of funds for James Earl Ray while he was a fugitive. Therefore, it could be argued that the broad authority of the Committee had been limited by the Committee's own statement in connection with the questions concerning the bank robberies. Even if it could be argued that the questions asked about the bank robberies that occurred after the Alton bank robbery went to credibility and were therefore material, it would seem that a relationship or similarity in the bank robberies would be necessary.

The Committee has taken the position that because of the [redacted] However, my review of the facts surrounding the bank robberies as set forth in a chart supplied by the Committee [redacted]

[redacted]

(3) Returning an indictment against John Ray in order to pressure his brother James Earl Ray into cooperating could and should be viewed as an abuse of process. It is one thing to use the criminal laws to pressure an individual into cooperating with the government. It is another thing to use the criminal laws against someone to pressure another individual into cooperating with the government. This is particularly true when the individuals involved are close family relatives such as brothers.

The facts of this case have been discussed with United States Attorney Earl Silbert who concurs in our recommendation. For your information, on two occasions, June 23, 1978 and August 24, 1978, representatives of the Criminal Division met with James Lesar, John Ray's attorney, in an unsuccessful effort to obtain Ray's truthful cooperation with the Committee. This approach of attempting to aid the Committee has been a paramount guideline in reviewing this entire matter.

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[redacted] Further, Mr. Keuch's June 13, 1978 letter to Parole Commissioner Robert Vincent was instrumental in having John Ray's parole retarded for approximately one month. (Tab J) A subsequent hearing resulted in several months delay in Ray's parole (Ray is scheduled to be paroled on September 18, 1978). The Committee has been advised that we stand ready to assist them in all matters of importance to the Committee wherever appropriate.

Attachments